

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
MAY 13, 2008

DNR AIR QUALITY BUILDING
7900 HICKMAN ROAD
URBANDALE, IOWA

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson David Petty at 10:40 a.m. on May 13, 2008 at the DNR Air Quality Building, 7900 Hickman Road, Urbandale, Iowa.

COMMISSIONERS PRESENT -

Suzanne Morrow, Secretary
Ralph Klemme
Charlotte Hubbell, Vice-Chair
David Petty, Chair
Susan Heathcote
Henry Marquard
Paul Johnson

ADOPTION OF AGENDA

Withdraw: Item 10 – Proposed Rule – Chapter 101.14(2)”a” – “Solid Waste Comprehensive Planning Requirements”

Withdraw: Approval of Minutes

Motion was made by Henry Marquard to approve the agenda as amended. Seconded by Charlotte Hubbell. Motion carried unanimously.

APPROVED AS AMENDED

DIRECTORS REMARKS

Director Leopold gave an update on the legislative issues:

- ❖ DNR did a great job on passing policy bills. (EPA fix-it bills)
- ❖ Overall Natural Resources funding increased while the environmental services division received more cuts.
- ❖ Will see more efforts on the manure stockpiling bill for next session.
- ❖ Missouri River bill passed – this will guide how our state participates in MORAST (Missouri River Association of States and Tribes)

Director attended the National Lakes Conference in Chicago last week. Iowa is doing very well when it comes to lake monitoring on a national level.

INFORMATIONAL ONLY

ELECTION OF OFFICERS

Chair

Charlotte Hubbell nominated Henry Marquard as chair.

Ralph Klemme nominated David Petty as chair.

Motion was made by Charlotte Hubbell that all nominations cease. Seconded by Sue Morrow.

David Petty withdrew his name from nomination as chair.

Motion was made by Charlotte Hubbell to approve Henry Marquard as Chair. Seconded by Sue Morrow. Motion carried unanimously.

HENRY MARQUARD, CHAIR

Vice-Chair

Susan Heathcote nominated Charlotte Hubbell as vice-chair.

Motion was made by Henry Marquard to approve Charlotte Hubbell as vice-chair. Seconded by Sue Morrow. Motion carried unanimously.

CHARLOTTE HUBBELL, VICE-CHAIR

Secretary

Charlotte Hubbell nominated Sue Morrow as secretary.

Motion was made by Charlotte Hubbell to elect Sue Morrow as Secretary. Seconded by Susan Heathcote. Motion carried unanimously.

SUE MORROW, SECRETARY

Henry Marquard chaired the rest of the meeting.

PUBLIC PARTICIPATION

PAM MACKEY -TAYLOR, Sierra Club member said that they support the rulemaking to ban the spreading of manure on frozen ground.

All landfills need to have liners. Do not amend the rules to exclude some landfills from having to implement this part of the rule. Even the Notice of Intended Action reflects the heavy burden to the public when a landfill leaches toxic pollution when it does not have a liner. The costs go through the roof if a landfill site becomes a superfund site. If you look at the kind of solid waste going into landfill, it is not out of the realm of possibility to expect the toxic soup to leach from an unlined landfill. The DNR is worried about the shifting of burden of proof to the DNR which was caused by the Administrative Rules Review Committee, however, the rule is still valid. Just the burden shifts. There is no reason why the DNR couldn't meet the burden of proof. Your job as the Commission is to protect the public and that is what you should do.

RICK MORAIN, Executive Director and President of the Greene County Development Corporation (GCDC) in Jefferson said that the Commission will be faced with a decision on the county's demand for a hearing regarding Prestage Farms. It is proposed to be a 4,800 head facility and plans to spread manure up to the city limits.

The City Supervisors and the city council are not opposed to livestock. Economic development is very important to Greene County. Agriculture including livestock is an essential component to Greene County's economy. The concern to GCDC is that a 4,800 hog facility a mile from our development zone could threaten what so many people have invested so much time and treasury. I have no reason to believe that the manager and the land owner would'nt do their very best to mitigate odor and runoff. I hope that whatever you decide in regards to the County's appeal, we simply ask you to take into account the potential impact of a large hog facility on the growth area of our town.

CHRIS HENNING, farmer and executive director of the Green Bean project presented the information on the master matrix regarding the Prestage Farms proposed site in Greene County.

The manure storage structure is the most important element of the confinement. It's what stands between us and the millions of gallons of toxic waste and thus we expect it to be specifically designed for each site. In fact that is the DNR's requirement. In fact, the DNR denied points for this same item back in October 2007 for two other confinements that used nearly identical language as used in this plan. We ask you to deny the 30 points on item 17 of the master matrix.

We are also contesting the 25 points on the master matrix regarding the wet & dry feeders. The plan states that they will be using wet & dry feeders OR dry feeders w/ watering cups. We want to know which one they are using. Again, the DNR denied those 25 points back in October. We ask you to deny those 25 points.

The 460 points that they stated minus 55 points would be under the 440 points required, therefore, failing the matrix.

CHRIS WILBECK, from Greene County asked the Commission to deny the permit to Prestage Farms.

There appears to be missing data in the MMP and conflicting data within the permit that was submitted.

- 1) It looks like the RUSLE 2 and the Phosphorus index reports are missing for two fields. This information is required by rule and is necessary to determine the proper amount of manure to apply to a specific field. This is to prevent over application of manure. Proper application is critical to these fields as portions are located in the ten year capture zone of the aquifer that supplies the city of Jefferson with its water. It appears that Prestage has improperly applied manure at least once in the last five years. We are concerned that these reports have not been submitted.
- 2) There is conflicting data on whether or not the soils are in alluvial soils. Who is checking this and protecting us?

We ask you to deny the permit because of our concerns stated today.

DAYLE ERICKSON, neighbor of the proposed Prestage Farms site said that manure will be spread right across from me. I'm very close to all of this. I have a petition that is signed by 86 neighbors in the surrounding area. On behalf of the neighbors of Prestage Farms 309, we ask that you deny this permit. We oppose this confinement. An article in the Des Moines Register quoted Ray Johnson, spokesman for Prestage Farms, as saying that if we aren't wanted in the area, we don't want to be there. The neighbors are concerned with their land value, air and water quality issues. We ask again that you deny this permit.

LEO BROOKER, neighbor of the proposed Prestage Farms site said that you have heard some very good points today on why to deny the permit for Prestage Farms. It concerns me on what type of neighbor they will be, if they are not meeting the minimum requirements.

Our property is worth about one million dollars and according to some studies that I have read from ISU, it appears that within 2 miles of a CAFO a landowner will loose about 25% - 40% on the value of their home. If the legislature or DNR is asking us to live within ½ mile of the odors and health risks, we would hope that Prestage Farms would meet the minimum requirements. It doesn't seem like they have met those.

GEORGE NAYLOR, family farmer from Greene County asked the commission that when they make the decision today that they err on the side of caution. I printed out a soil map of section 29 where the site is proposed to be. Just west and south of the building site, where manure will be applied, there are five sinks and numerous areas of sand, gravel, steep slopes and erodible land. These are areas where water could be endangered by manure application. Hardin Creek has A1 protection. The protected stretch runs between the north and south areas of the site. Due to the threat to our groundwater, aquifer and streams, we ask that you deny the permit.

DOROTHY POTTHOFF, resident from Jefferson who lives about 1.5 of a mile from the proposed site. Directly to the North and East, I will have fields where the manure will be spread. The field to the East has a lot of ponding which may cause a drainage problem. I fear for the unforeseen consequences of this project. I'm not sure that we have the scientific knowledge to be spreading manure on this small of an area or anywhere.

CHRISTOPHER JONES, laboratory supervisor for Des Moines Water Works (DMWW) submitted the following comments:

By now most of us have read or heard about the elevated ammonia-nitrogen levels in Iowa streams during February and March. Just what are the consequences of ammonia for drinking water treatment? To understand that requires some knowledge of chemistry and our water treatment process.

Both of our treatment plants are lime softening plants. Slaked lime, which is calcium hydroxide, is added to the source water to increase the pH to about 11. This causes hardness to precipitate from the water, generates toxicity to microbes, and helps remove organic material. After lime softening, the pH of the water is adjusted back down to 9.5 and the water filtered through sand.

After filtration, the water enters the clearwell, which is the finished water storage tank at the plant. The design, size, and flow pattern in the clearwell are critically important, because this is where primary disinfection with chlorine occurs. Disinfection of surface water is rigidly governed by regulations summarized using the term CT, where C represents chlorine concentration, and T represents the time the water is exposed to chlorine in the clearwell. Not achieving required CT levels means the water is not adequately disinfected, which can be a disaster for a utility and its customers.

Ammonia is not removed during softening or filtration, and once it gets into the clearwell it acts like Kryptonite – rendering the chlorine ineffective for primary disinfection. One part of ammonia consumes about 10 parts of chlorine – what we call a chlorine demand. If the utility has the capacity to feed enough chlorine, all ammonia can be quenched eventually. Thankfully, Des Moines Water Works had that capacity, although production at one of the plants had to be reduced when maximum chlorine feed rates were reached. The byproducts from the chlorine-ammonia reaction cause objectionable tastes and odors to form in the water, and the increased use of chlorine produces a family of compounds called trihalomethanes, which are regulated contaminants and are suspected of having toxicological effects in humans. During this episode, we saw chlorine demands due to ammonia of about 7 mg/L; the Council Bluffs Water Works saw a chlorine demand of 16 mg/L and the City of Panora water treatment plant observed a chlorine demand of 32 mg/L, meaning they had to feed 32 parts of chlorine just to get to 1 part remaining in the finished water after all the ammonia had been oxidized. Both the Des Moines and Council Bluffs staff noticed a strong manure odor in the source water – the water we're charged with making safe to drink.

Iowa DNR is charged with enforcing the rules of the Safe Drinking Water Act, and this their staff does mercilessly. Would we want them to do it any other way? Administrative code enables them to do so. But administrative code empowers no one, including DNR, with jurisdictional authority to enforce source water quality conditions for the purposes of drinking water supply. Everyone may say they care and that it is important to consider, but at the end of the day and by default the state of Iowa is telling us: "deal with it". How many of us in this room would say this is a good thing?

Our operation is governed by a 13 page public water supply operating permit, a 7-page NPDES permit, an 11 page water use permit, and an estimated 20,000 numeric data measurements are reported to DNR each year – this just for Des Moines’ water supply alone. Is it rational to exhaustively regulate the water that leaves our plant, but ignore the water that enters it? Surely no one can have confidence that is an effective long-term strategy for safe drinking water.

The Des Moines Water Works understands that a healthy agricultural economic is good for Iowa. After all, many of our customers are farmers, or work at Farm Bureau, John Deere, Pioneer, commodity groups and other organizations dependent upon farming. But can we say the agricultural economy is healthy when our streams are in the condition that they are? We’re not asking that agriculture be regulated in ways similar to a water supply. But this “anything goes” environment should not be the norm, and eventually it will not be consistent with a high quality state of life for Iowa’s residents. We’ve know there have been serious, systemic water quality issues in Iowa for 30 years. In those 30 years, we’ve seen more excuses, delay and obfuscation than we have progress. It’s time we stop saying that change won’t happen overnight – it could if we have the fortitude. Environmental performance needs to be part of the equation here. The Des Moines Water Works is interested in hearing how performance can be achieved and demonstrated.

Commissioners asked questions about nitrate removal.

LINDA KINMAN, representing the Iowa Association of Water Agencies submitted the following comments:

The Iowa Association of Water Agencies (IAWA) is comprised of both urban and rural drinking water utilities, which provide drinking water to approximately 50% of all Iowans. The source water for the utilities is a combination of surface and groundwater.

Many discussions, comments, articles, and newsletters are surfacing with regard to increased ammonia levels this spring. Some are trying to rebut the event, considering it a normal process due to unusual weather conditions, but that does not really carry much weight. Because no matter what the weather conditions were, the drinking water industry had to deal with high ammonia levels this spring due to practices that are not even considered agronomically appropriate. These challenges included:

- ❖ Adjustments to the treatment process, to ensure drinking water is safe for consumers,
- ❖ An increase in the cost of treatment, due to the need for additional chemicals, an increase in cost that is endured by their consumers,
- ❖ Hundreds of consumer complaints, due to the taste and odor of the finished drinking water, and
- ❖ The potential to violate the Disinfection and Disinfection byproducts rule set by the Environmental Protection Agency

Yes, in my comments to Commissioners in April 1 did not mention that every drinking water utility in Iowa dealing with the ammonia episode this spring had the potential of violation. The drinking water industry is probably the most regulated industry in the country. This was not a

situation where people just did not like the taste and odor of their drinking water, their drinking water utility could have been in violation of a drinking water standard. Standards are to protect public health.

While the mere presence of a contaminant at any level severely compromises the public's confidence in the safety of their drinking water. A violation would definitely diminish their trust. Many of you are aware that Des Moines Water Works received national attention a few weeks ago when Forbes gave them top honors in their search for "Best Cities for Clean Drinking Water." What would have happened if Des Moines Water Works would have received the honor one week and a violation the following week? Is that the kind of headlines and national attention we want on our state?

Non-point source contaminants are the largest source of contamination in Iowa's rivers, lakes and groundwater. The problems in Iowa are known, a lot of the remedies are known, and it is time to work with Iowans to resolve these problems for benefit of all Iowans.

And finally, I reiterate my comments from April, we always talk in generalities about water quality, costs to utilities, staying in compliance with regulations, and protecting public health, but we tend to forget that this is about the people of Iowa, the people we serve, the impacts of these issues on the people of Iowa – the people who are paying a high price to assume that their drinking water will remain accessible, safe and affordable. The same people of Iowa paying taxes with the belief that government is responsible for providing safe water; the same people of Iowa who pay taxes, which have paid subsidies for practices for more than 20-30 years, practices which were supposed to protect water resources from non-point source pollution, water resources that continue to deteriorate.

It's time to consider the people of Iowa and make progress toward changing Iowa's policies and practices to improve and protect our water resources. It is time to give Iowans the opportunity to again take pride in the quality of Iowa's rivers, streams, and lakes and to keep Iowa as a leader in providing the best drinking water. We need to create opportunities for long term profitability and sustainability for all Iowans by implementing sustainable water policies and practices. It is time to provide a unified voice to promote and educate for a sustainable, socially responsible, profitable, and globally competitive Iowa for today and into the future. But none of this is achievable, if we cannot begin to drastically change how we abuse our water resources. A sustainable economy requires sustainable water resources.

IAWA would like to thank the Commissioners for beginning a conversation today. Iowa needs your leadership in this conversation to bring about the implementation of remedies, implementation that may be voluntary or regulatory – implementation that stresses the importance and urgency of improving Iowa's water resources – implementation that begins today.

LARRY MCLELLAN, represents ten landfills throughout the state of Iowa. (Dallas, Page, Winneshiek, Fayette, Dubuque, Des Moines and Johnson, Sac and Kossuth counties) We have filed petition on behalf of the ten landfills on the Chapter 113 rules. You should be aware that in addition to the petition for judicial review for the rule before you and several other rules, we

have also filed a separate petition for rulemaking with the Department that will address a number of the issues in the petition for judicial review and will address this particular action item. The Department has agreed to meet with us this Thursday to discuss our petition and how the rules should be changed. The Department will be recommending to you on how this petition should be handled.

Going forward with the notice of intended action at this time is premature. We believe it will adversely affect the ability to have a meaningful meeting with the department this week. We ask that the Commission delay proceeding with any action on this particular item.

LORI NELSON, ICCI member from Guthrie County asked the Commission to move forward with a rulemaking that would ban manure application to frozen or snow covered ground. Manure does not absorb into frozen ground therefore resulting in run off to our waters. I have personally witnessed manure being spread on frozen ground. I did call the DNR field office to report this.

Large industrial operators are the major contributors to this problem and they should be held accountable for their actions and not Iowans. We have heard that manure is such a valuable resource and not used as waste but obviously that is not the case.

Lori Nelson passed out a petition on behalf of ICCI that deals with application of manure on frozen or snow covered ground.

Commissioners asked the public that when pictures are distributed that there is a date on the picture and somehow there is evidence that the picture was actually taken in Iowa.

SONIA SKIDMORE, ICCI member said that she has received numerous calls reporting that they are witnessing manure application to frozen ground. It's very shocking that there is nothing the DNR can do about this because there are no legal regulations.

We actually know where a majority of the pollution to streams is coming from. We are seeing a drastically large increase of livestock in Iowa. This is going to be an ongoing problem if we don't address this now.

I can expect that we will be discussing this issue for a while and I'm sure we'll hear that there is no proof that manure application is damaging. But there is scientific proof!

On behalf of the city of Jefferson, I hope you take the opportunity today to stand up for the community members and deny the permit for Prestage Farms.

JACK TROEGER, representing his family and farm from Ames. Based on science, we should not be allowing manure application to frozen ground. We constantly hear that everyone is doing things legally but you never hear about the ethics and moral of what they are doing. We all know what is correct. I would ask that when you make determinations with CAFOs and manure application that you go beyond what it is legal.

BARB KOLBACH, ICCI member and registered nurse from Adair county said that she is concerned with the quality of Iowa's air and water. The Commissions responsibility is to generate rules that move Iowa up to the middle or top of the clean waters list in the nation. One of the things that I heard growing up on a farm was not to be wasteful and that N, P and K would not be spread on frozen ground but would be spread at a time when it could be absorb into the soil. We have all been told that manure has been raised from manure as a nutrient therefore it should to also not be spread on frozen ground. I would also like to include the fact that we need you to respond to our petition that was submitted to the Department today.

Wisconsin, Virginia, Maine, Vermont, Minnesota and the nation of Canada all have varying rules regarding this issue in order to protect their water supply.

KEVIN SHILLING, from Greenfield Iowa in Adair county asked the Commission not to withdraw the petition. I'm looking at the political ramifications of banning all manure on frozen grounds. My sheep can't wait all winter long. Where is most of the problem? If there are 15 million hogs in Iowa and only 3 million people. Why are people the biggest problem when it comes to waste? It doesn't balance out. I would like to point out that there is no system in place that holds the manure management plan for Prestage Farms accountable. If I'm finding things wrong in the MMP and I'm not an expert, then how come the professionals are not picking up on these findings? I would like to see the elimination of preferential treatment. If they can't do it, put incentives in place to get it right. No one will raise their hand and say that they want a hog confinement next to them. It's socially unacceptable.

LEW OLSON, House Republican Caucus staff addressed the regulatory analysis process in the rule that restricts the application of manure on ground going to soybeans. Generally, when the state imposes burdens or restrictions on individual liberty, they need to show a positive and identifiable benefit. The actual increase for cost application under this proposed rule is nearly impossible to determine. Further on in the regulatory analysis document, under the less stringent compliance reporting, there is no data on the national impact to state water. The legislature needs to know what the hypothetical costs will be. It doesn't seem to make sense that impacts can be calculated on some rules but not on this one. I could come up with an estimate. If these rules cause folks to go corn on corn, then you will have a decrease in water quality. Because with corn on corn, it will take 50 lbs more per acre than just corn by itself. DNR said they don't know if there will be any impact if we moved to corn on corn, but I could give examples of counties that have done this. I would encourage you to do a little more due diligence on the regulatory analysis. The legislature needs to know what the likely costs and benefits are if we are to do our appropriate job with the regulations.

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MIKE DELANEY, president of the Raccoon River Watershed Association said that their number one concern is with water quality. Our organization is dedicated to the preservation and enhance of Raccoon River for safe and healthy use of our citizens. Regarding the CAFO near Jefferson, we have worked with the DNR to develop a canoe trail that runs from Sac City to Des Moines, which runs through the city of Jefferson. The quality of that water is extremely important. That trail should be opened by July 5th this year. Our organization promotes river

recreation. We believe that the reputation of the State of Iowa is being damaged by our air and water quality problems. We hope that changes and regulations will improve our water quality. We worked hard with the legislature this year and the legislators are responding.

KATHY MORRIS, with the Waste Commission of Scott County said that we went over two years with the DNR on the process to update Iowa's rules on landfills. Several times rules were changed and progress was made. We're excited to see those updates. We are in support of the regulations as well as many other landfills but we were not allowed to speak at the meetings because the legislative oversight committee? knew our stance, they just wanted to hear from the opposition side. After months and months of that, we had one exception and that's being addressed in this notice of intended action. I would encourage you to proceed with this rulemaking today. Based on my experience with the DNR, there will always be opportunity to comment and for the DNR to listen. I strongly support those rules.

Henry Marquard asked Kathy if she was satisfied with the rulemaking process.

Kathy Morris said that she commented on every rule. Not all of my comments were considered but I understood why.

-----End of Public Participation-----

DEMAND FOR HEARING – GREENE COUNTY; PRESTAGE FARMS OF IOWA, LLC-PI 309 SITE

Randy Clark, DNR attorney presented the following information.

On April 9, 2008, the Department issued a draft construction permit to Prestage Farms of Iowa, LLC (Prestage), indicating a preliminary decision to approve Prestage's application to construct a swine confinement operation (PI 309 site) in Hardin Township, Greene County. Notice of this preliminary decision was delivered to the Greene County Board of Supervisors (Greene County) on April 14, 2008. On April 21, 2008, Greene County notified the Department by facsimile of its intent to demand a hearing. The Demand for Hearing was mailed by Greene County on April 28, 2008, and received by the Department on April 30, 2008. Greene County has requested the opportunity to make oral statements. Pertinent documents relating to the Demand, and the Department's and Prestage's responses to it, will be provided to the Commission.

The Commission is requested to review this matter and render a final decision by June 4, 2008, which is 35 days from the date the Department received Greene County's Demand for Hearing.

The application presented by Prestage Farms concerns one finishing building with animal capacity of 4,000 head. The County submitted their concerns with the permit to the Department and I will proceed to go through each one:

Issue 1

Greene County has concerns regarding the odor and emissions from the facility and the manure management plan. The facility is 1.5 miles north of the city limits of Jefferson with a population of about 4,626 people.

The Department has verified that this operation has satisfied the separation distances as required. The statutory requirement in regards to manure application areas. In this particular case, they are going to inject the manure therefore separation distance requirement for the surface application of manure does not apply. So they meet all of the requirements pertaining to odor and manure application.

Issue 2

Greene County board of Supervisors believes that there will be potential damage to county gravel roads connecting the facility to paved roads.

The Department does not have the authority to deny the permit based off of this reason.

Issue 3

Greene County Board of Supervisors believes that there are long range growth plans for the city of Jefferson and that this facility will negatively impact economic development.

Again, the Department does not have any authority over impacts to economic development and growth.

Issue 4

Greene County Board of Supervisors recommended against the issuance of the permit based on public input and concerns. The public comments basically discuss the top 3 concerns plus concerns about their city water supply.

The Department did look at the source water for the city of Jefferson. In a 2001, department Source Water Protection Evaluation it stated that row crop agriculture is generally a potentially significant non-point source of contamination. But it went on to say that in this case, Jefferson's well field aquifer is overlaid with a confining bed thickness of greater than 100 feet below the surface. Their aquifer in this study was determined not susceptible to contamination based on criteria in the evaluation.

Issue 5

The city of Jefferson objects to the locating of a potential nuisance and health hazard so close to the city limits.

The Department would recommend that you uphold the issuance of this permit because it does meet all of statutory and rule requirements.

Prestage Farms LLC

Lynn Seaba, attorney for Prestage Farms, addressed the Commission. The legal argument that we have for the issues raised by Greene County are certainly not within the scope of the rulemaking

authority that you are given. This site meets and exceeds all statutory guidelines. It is a good site.

Chris Bellcock, representing the company said that we picked this particular site because the city of Jefferson is about $\frac{3}{4}$ miles away from the closest hog building and more than a $\frac{1}{2}$ mile away from the nearest neighbor. Looking at the map you will notice that there are two other hog buildings closer than what we are proposing. All of our land is pretty much within two miles. There will not be extensive hauling.

We have met every separation distance requirements and even go beyond some areas. As far as potential damages, I haven't seen any negative damage from hog buildings in my time. My parents are originally from Jefferson and they have been farming there as well. I wouldn't do anything that I thought would jeopardize my family's health and community.

Lynn Seaba showed a map of the wind pattern from the airport. The wind pattern shows that there will be no odor into the town of Jefferson.

Brian Roland from Pinnacle Group wrote the Manure Management Plan and phosphorus report. I worked at the site location and the building is not in the flood plain.

Charlotte Hubbell asked how many jobs will be created at this facility.

Chris Bellcock said that there will be one part-time (1/5) employee at that site but it will also employ feed haulers, meat processors, etc. Thirty jobs are created per [hog confinement] site but are not necessarily local jobs.

Greene County

Nick Martino, Attorney for Greene County

Mike Palmer, City Administrator for City of Jefferson

Mr. Martino said that section 459.304(3)(b) of the Iowa Code provides that the Board of Supervisors' recommendation to approve or disapprove a permit application may be based on public comments made under that section regardless of the results from the master matrix.

Additionally, chapter 459.103(2) of the Iowa Code provides for the purposes of approving or disapproving an application for a construction permit the conditions of the approval of the application based on the master matrix are not requirements of chapter 459 until the Department approves or disapproves the application based on those results. Again, this language would be pointless if the legislature did not intend to give some leeway to this commission.

Most importantly, under chapter 561-10.4 of the Iowa Administrative Code the department has authority to grant waivers and variances from the requirements of rules where 1) application of rule which would impose undue hardship of a person requesting the variance; 2) that the waiver or variance from the requirements of the rule would not produce the substantial rights of another person; 3) that the provisions of the rule are not specifically mandated by statute or other provisions of law. Again, it would be Greene County's position that they are not, until this Commission says they are. 4) Substantially equal protection of the public health and safety will

be afforded by means other than that prescribed by the particular rule. Greene County's position is that there would be impact to the public health.

At this point, I would also like to offer the evidence as presented by those during public participation. While supposedly, the matrix system is designed to take all variables into consideration, it simply doesn't consider the prevailing winds in Iowa. It also doesn't give sufficient consideration for set backs on manure application. So we end up with a proposed site 1.6 miles upwind of a 4,600 population center with plans to apply manure up to the very doorstep of the city. I was struck by the number of times the DNR said they don't have the authority to consider certain issues. I believe that says nothing more than highlighting the fact that the matrix is imperfect and does not take all factors into consideration.

There's also no way of knowing how this will negatively affect the ground and source water. It would appear that the risks for this project far outweigh any potential reward for the county, city, or the state. If ever there was a situation to allow common sense to triumph over an imperfect grading system, this would be it.

Mike Palmer, City Administrator for Jefferson said that they are concerned with the land issue as well as the water quality. We consider anything within two miles to be too close in proximity to the city. We are viewing this facility as too close. Yes, there are two facilities within the two miles. They are privately owned and under 2,500 in production. We view these types of facilities as an industrial use. They have all the characteristics of industrial. (noise, potential discharge of by-products, transportation issues, odor, etc.)

Please note: Representatives of either the Board of Supervisors or City of Jefferson presented a map that showed the location of more than 25 confinements around Jefferson.

Our other concern is that this will inhibit our potential growth as a city. We would ask that the consideration be given that this application is far too close to our borders.

Another concern is with the water. We know that the DNR did respond to ground and source water concerns based on the study in 2001. We are concerned with the underground manure pits. We understand that they do not need to be lined and that they are not inspected on a regular basis. What is the long term maintenance plan?

Randy Clark said that the county is raising some additional issues that were not apart of their Demand For Hearing. DNR rule 65.10(7) says that the Demand shall include a statement providing all reasons on why the application should be approved or disapproved according to legal requirements in this chapter; legal briefs and any other documents to be considered by the Commission or a statement indicating no other documents will be submitted for consideration by the Commission. And a statement indicating whether oral argument before the Commission is desired. The Department would submit that the County has raised arguments and documents were presented today that were not apart of the original Demand For Hearing; therefore, they should not be considered by the Commission during this proceeding.

Henry Marquard said that the Commission can determine and discuss whether or not this site meets every point on the Master Matrix.

Randy Clark said that there are a number of statutory requirements that the Department looks at that are not apart of the matrix. There are separation distances to water sources, residences, and so on. Those are statutory requirements that have nothing to do with the Master Matrix. The Master Matrix on the other hand sets forth additionally separation distances that the applicant chooses to take to claim the additional points by the Matrix. The statute is clear that the Department can only evaluate the Matrix if the County says the applicant didn't have enough points. In this case, Greene County said that they passed the Master Matrix; therefore, that does not give us the authority to evaluate the Master Matrix.

Henry Marquard said that the Commission will not consider the Master Matrix at this time because the county did not object to the Master Matrix points.

Lynn Seaba said that they would like to object any public comments that were not provided to Prestage Farms and I believe that Greene County had made a blanket offer of evidence and we have not seen that. This is not an industrial process. Most certainly what Prestage Farms intends to do is to raise hogs. They are using the manure as fertilizer to raise row crops. There is nothing about this process that makes it fall into the realm of industrial process. This is merely an agricultural production facility.

Paul Johnson asked how many private wells are in the area?

Charlotte Hubbell asked the Department if they had reviewed the possibility of exercising the discretionary rule.

Susan Heathcote asked where the well systems are located and their depths.

Mike Palmer said that the wells that we are concerned about by HWY 30 (wells 7 & 8)) are about 1 – 2 miles from the site. These are about 185 feet deep.

Jerry Roberts, Greene County Supervisor, said I speak to your challenge as discretionary information. Greene County is a county that perhaps distances doesn't readily apply to. We have over 606 drainage districts in the county that we as supervisors are responsible for. We have underneath the county a vast drainage system from fields that go into the drainage systems and then to the streams and then to the Raccoon River. The Raccoon River, in Greene County has been designated by the DNR itself as one of the hot spots in Iowa for bacteria pollution. So within this reclaimed county and marshland, we have distance requirements that really don't come into play because there is a drain everywhere to drain whatever is put on the farmland to put in the drainage system. Right now we have fields full of water. The Raccoon river acts as a plug for that drainage system in the county. As soon as that goes down all the manure that has been leached out of the ground that is sitting their in ponds goes directly into the intake. It doesn't have a chance to filter through as a normal county would. There is no bad person in any of this, it's how do we solve the problem. So taking in the consideration the distance requirements, perhaps they are not cookie cutter for every county. Perhaps, we have a problem that needs to be recognized and should be at your discretion.

David Petty asked Prestage Farm if they could eliminate acres from the manure management plan and still be okay with their plans.

Prestage Farms said that they could submit in place of but could not take out acres without replacing them with other land.

David Petty inquired whether or not Prestage Farms could take out the field closest to Jefferson but add in another field somewhere else.

Prestage Farms said that they would have to obtain land easements for more spreadable fields.

Paul Johnson asked the DNR about assessments done at the site. Does the Department take into consideration the wells within immediate vicinity and look at the vulnerability.

Randy Clark said that there are well separation distances within our requirements. We do not assess vulnerability.

Paul Johnson asked if the nearby wells contain nitrates.

Mike Palmer said that wells 7 & 8 have high ammonia levels.

Ralph Klemme asked if the county is in the process of closing any drainage wells in Greene County. I know at one time we did legislation to close drainage wells.

The Greene County Supervisors present said that there are no drainage wells.

Ralph Klemme said that if Prestage Farms decided to go to two sites of 2,500, would you be here objecting that. And why?

Greene County said yes because it's within the two miles of Jefferson. We're not against agricultural growth.

Ralph Klemme said that I have a problem just shutting the doors to agricultural growth in Iowa. We have a lot of livestock in our county. Rural Iowa is also alive. I'm concerned that if we set a precedent of a two mile radius around a city, there's not going to be growth in livestock. We need it all for economic growth. Things are changing all the time in the agriculture business.

Susan Heathcote asked if Prestage Farms had any plans to address the odor issues.

Prestage Farms said that the current plan does not have a barrier row of trees. There is a tree barrier about ½ mile to the south. The thing that we do at every location we have for odor, we add a bacteria to the pit that helps break the manure down to what's in the pit and reduces the odor as its being agitated and applied.

Susan Heathcote asked if Prestage Farms would consider implementing more odor control measures since it's close to the town?

Prestage Farms said that they don't have a problem committing to that. In instances where we have added trees, we created issues with the tile lines and tree roots. We have not done any bio-filters.

Charlotte Hubbell asked for a copy of the code language as stated by Greene County.

Sue Morrow asked to see where Raccoon River runs in relation to the proposed site.

Representative from Board of Supervisors or City of Jefferson said that Hardin Creek wraps around Jefferson on the east side and then drains into the Raccoon River less than 6 miles south of Jefferson.

Charlotte Hubbell asked about the typical number per county of drainage districts.

Greene County said that they are unsure but know that some only have 4 or 5. A major portion of our county is marsh land.

Charlotte Hubbell asked if the DNR considered exercising the Department discretion rule under Iowa Administrative Code section 65.5? The Department may deny or prohibit the construction of an operation if the Director determines from the evaluation...do I need to read the whole rule? For the audience's education this pertains to manure that will cause pollution to a water of the state or will cause a violation of state water quality standards.

Richard Leopold said that we do look at that when there is contention on both sides. We have received a lot of input on this particular site. We have looked at our specific statutory authority. In this particular case, the County passed the Master Matrix. This does meet and/or exceed all separation distances. We have to look at whether or not this site is imminent danger to air, water or land quality. We can't see a lot of imminent danger, so we don't feel that we have the legal right within our department to say no. Concerns were brought out and they are legitimate. They are systematic concerns not site specific concerns. We felt that as a Department we had to stand behind what we had seen thus far. I believe you have a legitimate challenge and as the Environmental Protection Commission you do have authority over policy matters but falling within the statutory language that we have been given, I feel we don't have the authority to deny this permit.

Randy Clark said that under the rule 65.5(3)(a) talks about several trigger factors that we need to look at further such as; 1) what is the likelihood of manure being applied to frozen or snow covered crop land 2) proximity to sensitive areas 3) topography, slope, vegetation and 4) public water supply 2-year capture zone. I believe that there is potentially only one concern and that would be manure application fields in the capture zone. While some of the fields are in the 10 year capture zone for Jefferson's wells, none are in the 2 year capture zone. The Department didn't see any trigger factors that would lead us to determine anything leading to denial.

Charlotte Hubbell said that she would argue that this is a sensitive area. Its marsh land that has 606 drainage districts that are all draining into the Raccoon River Watershed, which we heard at

the last month's meeting is filled with fecal bacteria, high nitrates. This maybe one of the most polluted watersheds in our state and we're talking about adding 4,800 more hogs in this area. I'm all for economic growth but on balance, I think we are on the tipping point of really ruining this particular watershed. We've got to start looking at this on a site specific basis and perhaps the county attorney or organizations in this room want to ask the state to either rewrite the Master Matrix plan or ask for a moratorium on further hog lots in areas that are sensitive to manure spillage. I also think that 65.5(3)(b) gives you three additional reasons to deny a permit. I can not in good conscience vote for this site of a hog lot given what I have heard today. It's a sensitive area and it affects us in Des Moines and those down river. We've got to take a stand.

Richard Leopold said that as far as the drainage of the county. If you split the state up by eco-regions, than this is true in the entire Des Moines lobe. The entire central Iowa was a marsh at one point.

Charlotte Hubbell said that you always have the karst land up in northeast Iowa. Maybe wind energy is the answer to economic growth. This spells trouble with a capital T.

David Petty asked the Chairperson what the Commissions task is today.

Henry Marquard said that it's the Commissions task to approve or disapprove the issuance of the permit. Commissioner Hubbell, it's my understanding that you would like to know if the Commissioners can invoke the agency discretion rule.

Henry Marquard said it's my interpretation that the Commission can invoke the agency discretion rule as means to deny this if the Commission decided that this particular rule was met.

Charlotte Hubbell said that it's the director who should determine using the department discretionary rule. Does there have to be a rule that says this doesn't make sense to put another hog lot in here? This is degrading the quality of Greene County and the Raccoon River watershed, Des Moines drinking water and communities downstream. Maybe we need to go back to the legislature for clarification. There are all kinds of options here. I just can't vote today in favor of this confinement.

Paul Johnson asked if the director's discretionary rule applies only to water quality or are there other factors in siting that can be involved?

Randy Clark said that the rule includes: 1) manure that will cause pollution to the waters of the state 2) manure that will cause violations to the state water quality standards and the final one is that an adverse effect on the natural resources or the environment will occur in specific areas due to the current concentrations of animal feeding operations or the associated manure application areas.

Paul Johnson said that the fact about this being placed within Jefferson's two mile limit, apparently there is no law where they can zone out agriculture within that two mile limit. But a large confinement within the two mile limit could adversely effect the environment of that area. We put the two mile limit on because we're telling communities that you have the opportunity to

have some say over what's occurring right close to you. That's the rationale for the two mile limit. Could you use your discretionary rule? Commissioner Hubbell suggested that we shouldn't allow for anymore confinements in the watershed of the Des Moines lobe. I believe this is a topic that we need to discuss more. We're piling a lot of animal confinement on top of a very fragile drainage system. Agriculture would like to argue that, just give us common sense and good science and we'll do what's right. I don't think adding confinement system after confinement system on top of drain tile is good science or common sense. Nonetheless, we're doing it in Iowa.

Charlotte Hubbell said that she was suggesting that people in this room would want to ask for a moratorium but I think the Department has several ground under their discretionary authority to deny this particular hog confinement in this particular location.

Henry Marquard said that it seems to the chair that unless the agency would want to re-review this matter for application of the agency discretion rule, I think the sense of the Commission would say go ahead. If the agency does not want to, then I believe the Commission will have to resolve this based on the applicable law and regulations outside of the scope of the agency discretion rule. So would the agency re-review?

The Commission can't send it back to the Director.

David Petty said that it's the director's discretionary rule not the Commissions.

Motion was made by Charlotte Hubbell to send the permit back to the Department for re-consideration of the agency discretion rule and its application to this particular hog lot. Seconded by Sue Morrow.

Randy Clark said that once we're at the stage of procedure where we're at now, the Commission has 35 days to make a decision. The decision is whether deny, approve or modify the permit. I don't believe the Commission can do what you're proposing to do.

Henry Marquard disagrees with the legal counsel that the Commission can't do what Commissioner Hubbell first moved. This is something that could be done. Is this an action on the application? I think the Commission needs to decide.

Charlotte Hubbell moved to deny the permit and then send it back to the Department for re-consideration of the permit based on the agency discretion rule.

Henry Marquard and Charlotte Hubbell decided that this motion did not make sense.

David Petty said that the issue in front of us is to deny or approve the permit and then we can go onto other issues.

Charlotte Hubbell said that she disagrees. So can we never ask the Director to utilize this authority, he would have do it on his own? Is that where we're at? By the time we get the

appeal, the Department has already made its determination. So we can assume that you have already reviewed the discretionary rule and decided it doesn't apply?

Charlotte Hubbell said that we were told that when we had a review of a permit application that was near a mental health facility, we went ahead and approved the permit and then later e-mailed the Director and asked if he could use the discretionary rule. After discussing it with legal, they said no, because we took a stand and allowed the permit to go through therefore not allowing us to use the discretionary rule. So I guess what we could do is to deny the permit today, perhaps the Department wants to go back and review and then come back to us with another application for our approval.

Henry Marquard said that if we deny the permit, then the process starts from scratch again.

Susan Heathcote asked if sending this back to the Department is even an option for us today.

Richard Leopold said the action in front of you is an appeal to the Department's decision. So we have already affirmed what the county has sent us and the Master Matrix. We have done our due diligence consideration of all the factors and we have decided to issue the preliminary permit. We didn't have legal grounds to do otherwise. I agree with some of the systematic problems as stated by Commissioner Hubbell brought up but in this particular case we have granted the permit.

Henry Marquard clarified then that the Department would not take further action regarding this permit if the Commission decided to defer to the Director.

Charlotte Hubbell said then we can never ask the Director to utilize this authority, he would have to do it on his own. We can't ask? That's my understanding...is that where we're at? By the time we get the appeal the Department has already made its determination. So we can assume that you already reviewed the discretionary rule and therefore it doesn't apply.

Paul Johnson said which means you've decided that the Commission has no authority over the discretionary rule at all?

Henry Marquard said that it's clear the Commission could overturn the Director's decision to grant the permit. If the Director issued a finding that said I am not going to apply the agency discretion rule because of "xyz", that could be appealed to the Commission. That was discussed when this rule was debated. We discussed what the powers of the Commission would be and the nine members of the Commission could not agree what the Commissioner's legal authority would be in that case. It was left that if it came up in the future, then the Commission would decide.

Motion was made by Charlotte Hubbell to withdraw the original motion and to deny the permit application. Seconded by Sue Morrow.

David Petty asked Charlotte Hubbell which appeal items that the county has asked do you not agree with?

Charlotte Hubbell said that by statute it's a sensitive area and I don't believe it's appropriate to be putting more hog confinements in sensitive areas where there are drainage tiles that drain into a watershed that has been proven to have severe problems with ammonia and nitrates.

Paul Johnson said that the map shows about 15 hog confinements within 5 miles of the proposed site. That's a lot of hogs. This is what concerns me with the rules and the separation distances. I think the rules in this case, we have an extreme example of where our laws and rules in this state are not protecting the waters of our state. If we're going to take a stand, this is the place and time to do it.

Ralph Klemme said that if this motion passes, as time moves on, this will continue. In most communities, they will find some way or how to slow down growth of the livestock industry. The matrix, which I was involved with, was trying to avoid county supervisors sitting at a table once a week to deal with choosing on what livestock facilities they want to allow. The Matrix is not perfect, there could be some changes. But we wanted to put something together that would prevent them from being put in a tight spot. My supervisors in Plymouth County chose not to use it at all. I just have a feeling that if this motion passes there will be more before this Commission and that's okay, because maybe you want to decide that. I certainly have a problem with that. I will vote no.

Susan Heathcote asked about the City's water wells. Even though they are not considered extremely vulnerable, there certainly are alluvial aquifers and do have some contamination from ammonia and nitrates. So there is vulnerability here with this type of concentration. The other issue that concerns me is that there is a lot of odor associated with facilities. A lot of that can be mitigated. We don't know what type of impact this facility will have. We won't know until it's built. It bothers me and concerns me that there is not more of consideration for odor. More could have been done to address those types of issues. The fact that the applicant in this situation did not take this into consideration when placing it so close to a town. That bothers me too. Things could be done working with the town and neighbors to address these concerns. I would hope there are ways to work this out. We need to be sure that the applicant is going to be a good neighbor.

Paul Johnson said that we have 13-15 facilities within 5 miles this proposed site as well as being close to an urban area and it's going to be built within 2 miles of a community. This is not your average facility even in the Des Moines lobe. It's in a poorly drained area. I realize that the department followed the rules. Looking at each one in isolation of the community is a serious problem. Someone ought to have the authority to say wait a minute, even though we technically followed rules...This is not stopping agriculture. It's putting common sense into some of the problems. How are we ever going to get anything accomplished if we don't start somewhere?

Henry Marquard said if there were issues that applied to the matrix then those issues needed to be raised prior to this meeting. As to the overall policy issue, I would simply refer the audience to the Commission's report to the Governor and Legislature that was submitted in January. It contains lengthy suggestions for the Governor and Legislature on some of the issues brought up today.

Roll call vote as taken on the motion to deny the permit.

Roll call vote went as follows: Susan Heathcote – aye; Sue Morrow – aye; Ralph Klemme – nay; Paul Johnson – aye; Charlotte Hubbell – aye; David Petty – nay; Henry Marquard – nay. Motion fails.

Henry Marquard said that in his mind this does not mean this approves the permit.

Randy Clark said that his understanding is that the Commission needs to make a decision to approve or disapprove or modifications. The issue is still before you.

Ed Tormey said that the law states the Commission shall consider the department's decision. Obviously, if there is no decision by the Commission (a vote one way or another with five votes) then in my opinion the director's decision stands and there's nothing to prevent the permit from going forward.

Motion was made by Charlotte Hubbell to reconsider the vote in light of the legal council just received. Seconded by Sue Morrow. Roll call vote went as follows: Paul Johnson – aye; Charlotte Hubbell – aye; Sue Morrow – aye; Susan Heathcote – aye; Ralph Klemme – nay; David Petty – nay; Henry Marquard – aye. Motion carried.

Charlotte Hubbell said that you need five votes either way. Five votes to approve or five votes to deny. You can't say that four votes to deny equals an approval. That's an erroneous interpretation of the law.

Henry Marquard said that we now need to re-vote to deny the permit. For everyone's understanding, if this motion does not pass then the agency's decision to issue the permit stands because of the way the administrative rule are written. Even though we have seven members, it takes five members to vote to carry this motion.

Roll call vote went as follows: Susan Heathcote – aye; Ralph Klemme – nay; Paul Johnson – aye; Charlotte Hubbell – aye; Sue Morrow – aye; David Petty – nay; Henry Marquard – nay. Motion fails.

The Department's decision to issue the permit stands.

REFERRALS TO THE ATTORNEY GENERAL - HAWKEYE RENEWABLES, LLC

The Director requests the referral of the following to the Attorney General for appropriate legal action. Litigation reports have been provided to the commissioners and are confidential pursuant to Iowa Code section 22.7(4). The parties have been informed of this action and may appear to discuss this matter. If the Commission needs to discuss strategy with counsel on any matter where the disclosure of matters discussed would be likely to prejudice or disadvantage its

position in litigation, the Commission may go into closed session pursuant to Iowa Code section 21.5(1)(c).

Jon Tack presented the following information.

Hawkeye Renewables, LLC owns and operates a dry-mill ethanol plant near Iowa Falls. Operations at this plant began in October of 2004, in the past year the plant has expanded and is currently processing approximately 36 million gallons of bushels of corn per year.

On November 13, 2007, the Department received a call from Scott Peden, Iowa Falls Wastewater Treatment Facility operator. He reported that milky white water was discharging from Dago Lake and into the Iowa River. DNR field staff went to investigate and observed a very strong septic odor and took samples. The DNR staff then proceeded to Monarch Pond and observed several dead fish, that the water had a milky white color and that there was a strong odor. At the culvert that discharges to the Iowa River, they observed that the water was milky in color and had a large amount of *Sphaerotilus* sp. (bacteria) and that there was a strong septic odor. A Notice of Violation was sent to Hawkeye Renewables for the above discussed violations.

The issue that most concerns me is that Pollution Prevention Plan for this facility contemplated there would be a difficulty in keeping the dry distillers grain out of the water and that they needed to have management. This was an anticipated problem that was not being dealt with.

Also, the permit for the storm water discharge required yearly monitoring and that also had not been occurring. That is another anticipated known issue and was not being dealt with.

Photos were passed around showing dry distillers grain in the ditch and a milky coloration in the ditches.

They have documented finding this *Sphaerotilus* sp. bacteria in the ponds, ditches and storm water ditches. This is apart of the ethanol spill. This concerns me because this is not something that happens when you have a one time discharge. Something is impacting this over time and is leading to these types of soil and water conditions.

Like I said, this was an issue that was foreseen in the Pollution Prevention Plan. It needed to be dealt with. There were several weeks with documented water quality problems.

On February 15, 2008, Hawkeye Renewables spilled approximately 29,000 gallons of ethanol while loading a railcar for transport. Hawkeye Renewable reported to the Department that the spill occurred because the hose used to fill the railcar was not properly attached. Hawkeye Renewables failed to notice this until after the fill cycle which is 40 minutes. A couple of walks around the railcar would have prevented such a large spill. The Department took samples of the water located down stream from Hawkeye Renewables between February 15, 2008 and March 21, 2008. These samples were sent to University of Iowa Hygienic lab. The results of the water samples establish that ethanol left Hawkeye Renewables' property via a county drain tile which drains to Dago Lake, Monarch Pond and Iowa River.

There was a remediation trench dug and other significant cleanup activities afterwards. I would expect that representative from Hawkeye Renewable will tell you today about the steps that they have taken and how they are going to deal with this. That's great, but we believe this deserves a referral because it was fully avoidable. We have documented that there were impacts to the water of the state, especially the very important Iowa River. For those reasons, I ask that you refer this case to the Attorney General.

Jay Eaton, Attorney representing Hawkeye Renewables, LLC. said that the job here today is to look at the facts in regards to this particular case and then make your best decision about that.

DNR has put together their litigation report today for you but there is some information that they did not tell you.

There have been a number of pictures passed around today with different dates. What we are dealing with today is two and only two unrelated occurrences. One was the product release when the tank was being filled and the other occurrence is the matter relating to dry distillers grain dust that blows from the facility and landed in the ditches and then with rain it was dissolved and washed into the stormwater retention pond on the property. This is not a series of events. These are two unrelated separate events.

The litigation report contains false information with respect to the septic condition of the water and the bacteria and the requirements of the company to test the stormwater retention pond. The company did comply with its permit requirements to sample and test annually the condition of the stormwater retention pond. That was done, though the report says it wasn't.

With respect to the product release. It did occur and Hawkeye Renewables has filled over 9,000 railcars since it began operations three years ago. This is the first and only occurrence of a release like this.

In regards to the dry distillers grain. This is a by-product that is stored in containment areas and were designed by the architects and engineers. This ethanol plant is built no different from any other ethanol plant in the state in terms of the dry distiller's grain storage. Mother nature does blow from time to time and when strong winds occur it can pick up dust and deposit it in other areas. We realize that this did occur. Again, this is the first time that this was experienced at this plant in this way. It's another unique occurrence. This was not anticipated to happen in this way. There were containment areas and they thought it was contained but it did occur.

Hawkeye Renewables response was like any responsible company.

Again, you may ask what would be the response from a company? Again, it would be anticipated that the response would be vigilant if this occurred. Please listen to Bruce as he gives his response as to how they followed up.

Bruce Rastetter, Chief Executive Officer of Hawkeye Renewables said that we very clearly take our business and safety reputation and environmental obligation very seriously. We are very disappointed with the incidents that happened.

Staff present:

Mike Stickland, Chief Operating Officer

Donovan Pricelew, Vice-President of Production

Steve Anderson, Plant Manager in Iowa Falls

The original plant was designed to drain into the stormwater retention pond. Bruce walked through the details on what happened and how they plan to prevent it from happening again.

Product release on ethanol occurred on February 15, 2008 during the night shift. It was about 10 below zero that night. The wind was blowing. We have operated the plant 24/7 for three years with no incidents. The loading spout that the employee thought was in the tank wasn't. He walked away from the tank believing that it was in. The safety interlock system failed. We had a human failure and a safety interlock failure on the maintenance system. At about 3:45 am, the system is designed to run based on the amount of gallons in the tank. When the employee came back to the tank, he noticed there was a spill. He immediately told everyone at the plant, they responded by bringing absorbent (distillers grain) to stop any flow and then we notified the DNR. He also contacted Hydro-Kleen who is our pre-approved remediation contractor to be on site to help with the cleanup and to move forward with recovering the product. The vast majority of the 29,000 gallons was vacuumed up, returned to the plant and re-processed. Since that time, we have additionally collected the contaminated soil and disposed in a designated DNR approved landfill.

The company has taken steps in making sure that this doesn't happen again. We have taken disciplinary action, not just against the employees that were there but across the plant. The five managers and two operators were suspended without pay. We wanted to make sure that we sent a message to all employees that we are serious about environmental protection.

We have implemented procedural and facility improvements to ensure that the load-out operator is present during the entire loading operation. The facility improvements include a climate-controlled building located at the load-out rack. The original plan did not have this.

We have begun weekly testing of the safety interlock to make sure it's operational.

A secondary containment berm is being designed and will be constructed during the summer 2008.

In terms of the dry distillers grain and the issue with it blowing around and getting deposited in the ditches, we have recognized this. We have raised the height of the concrete side walls of the wet pads and installed wind barriers on top of the wet feed pad walls. (\$50,000 spent)

We have additionally enclosed the distillers grains conveyor, which was not enclosed when we first built the plant. (\$300,000) We've also installed gutters to avoid water from going onto the cement pad even though there is cement walls around it.

We've also implemented daily mechanical and manual sweeping program for the distillers grain loading area. We've removed distillers grain and soils from the ditches and land applied as recommended by the DNR inspectors. The reason for the dried grains is because of standing water not the distillers. We cleaned and renovated the ditches with fresh soil and crushed stone for erosion control. Ditches will continue to be maintained in a clean state to prevent collection of dried distillers grains in the ditches. Housekeeping practices have been improved. We are moving forward and taking these things very seriously.

Storm water permit compliance

The company currently has a NPDES general storm water permit. As a SARA Title facility, the company is required to test annually for BOD and Total Nitrogen (TKN)

The company conducted annual testing for both BOD and TKN in 2006 and 2007 as required.

Best Management Practices have been implemented for keeping distillers grains out of the storm water collection system

The company has applied for an individual storm water discharge permit in compliance with a DNR request to do so

Additional Environmental Compliance initiatives

Hire full-time environmental and safety manager to coordinate company-wide compliance with environmental regulations – completed

Hire a full-time environmental and safety professional for each plant to assist plant managers with environmental compliance – completed

Tie 30% of annual employee bonuses to environmental compliance for 2008 – completed

We have completed environmental compliance refresher training for all plant employees with written testing to evaluate learning. This training will be repeated at least annually and with all new employees soon after hiring – completed

Jay Eaton said that Hawkeye Renewables would request that you do not refer this matter to the Attorney General. They are two separate accidents. They were unanticipated and were fixed above and beyond what was really needed. Hawkeye Renewables has done everything that they could to get things on track. This Commission can acknowledge the leadership shown by Hawkeye Renewables by not referring them to the Attorney General's office.

Jon Tack said that this case does warrant referral. In regards to the ethanol spill being unanticipated, all we're saying is that someone should have at least walked around once during the fill. This is not responsible conduct. The dry distiller's grain issue does warrant a referral.

It affected the waters of the state. What happened in the past shouldn't have happened and therefore it warrants a referral.

Susan Heathcote asked about the dry distiller's grain and the first Notice of Violation.

Eric Wicklund said that our first visit to the facility we noticed that there was dried distillers grain in the ditches. Basically we required them to remove it from the stormwater ditches and then on a subsequent inspection a few weeks later, we found that another section of ditch hadn't been cleaned up. The only other time we dealt with dried distillers grain was during a recent inspection (about a month ago) where we found that material throughout the plant.

Paul Johnson asked if this plant is the only one run by Hawkeye.

Bruce Rastetter said that there is another one in Fairbanks, Iowa.

Paul Johnson asked if Hawkeye had been cited for any other violations.

Bruce Rastetter said that there haven't been any other environmental issues.

David Petty said that he has visited this site several times and was very impressed with this particular ethanol plant.

Motion was made by David Petty to not refer Hawkeye Renewable to the Attorney General because of the extra effort involved in resolving the issues. Seconded by Charlotte Hubbell. Roll call vote went as follows: Ralph Klemme – aye; Paul Johnson – nay; Charlotte Hubbell – aye; Sue Morrow – aye; Susan Heathcote – nay; David Petty – aye; Henry Marquard – aye. Motion carried.

NO REFERRAL

REFERRALS TO THE ATTORNEY GENERAL - TODD KAY (BUENA VISTA COUNTY) – ANIMAL FEEDING OPERATION

The Director requests the referral of the following to the Attorney General for appropriate legal action. Litigation reports have been provided to the commissioners and are confidential pursuant to Iowa Code section 22.7(4). The parties have been informed of this action and may appear to discuss this matter. If the Commission needs to discuss strategy with counsel on any matter where the disclosure of matters discussed would be likely to prejudice or disadvantage its position in litigation, the Commission may go into closed session pursuant to Iowa Code section 21.5(1)(c).

Kelli Book, DNR attorney asked the Commission to refer Todd Kay to the Attorney Generals' office. We are asking for referral because he has failed to submit a complete Iowa Phosphorus Index manure management plan for his facility located in Buena Vista County. The manure management plan is a crucial aspect of our animal feeding program. In 2004, Mr. Kay was issued an Administrative Order for failure to submit an update and his fees by January 1st. In

August of that year, we asked for a referral. In October, he did submit the fees and updates. From 2004 until March 1, 2007 he was operating in compliance. And then in March 2007 he entered into an administrative consent order, meaning he agreed to do this. He failed to submit his Phosphorus Index and compliance plan by January 1st, 2007. We have not received this and he continues to operate. In January of this year, he was again required to submit the phosphorus plan, MMP and fees. Nothing has been received. He still continues to operate. We are asking for referral today.

Motion was made by David Petty to refer Todd Kay to the Attorney General's office. Seconded by Susan Heathcote. Motion carried unanimously.

REFERRED

**CLEAN WATER STATE REVOLVING LOAN FUND – FY 2008 INTENDED USE PLAN
FOURTH QUARTER UPDATE -- AMENDMENT**

Chuck Corell, Water Quality Bureau Chief presented the following information.

Commission approval is requested for an amendment to the fourth quarter update to the Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP) for FY 2008. The Commission approved the fourth quarter update on March 11, 2008.

The update included adjustments to the non-point source set-asides. An additional adjustment is proposed in this amendment, due to a miscalculation in project demand for the Livestock Water Quality Facilities (LWQ) program. We are proposing to add \$2 million to the LWQ set-aside. We will reduce the General Non-Point Source set-aside by that amount. Projects for which requests have already been made can be funded as needed and there are still funds set aside to fulfill new requests in the General Non-Point Source program.

Program	Previous Set-Aside Amount	Proposed Set-Aside Amount
Livestock Water Quality	\$6.0 million	\$8.0 million
General Non-Point Source	\$21.7 million	\$17.3 million

A public meeting was held May 5, 2008 to receive comments on the amendment.

Susan Heathcote asked what type of livestock facilities are we talking about?

Chuck Corell said that we have had more requests from facilities that involve water quality, pollution controls, run off controls, or any kind of flow emission control.

Paul Johnson asked if this is being utilized by the poultry industry?

Chuck Corell said that he is not aware of any poultry facilities. Through this fiscal year, we will continue working with Iowa Ag development authority to help promote those loan programs.

Motion was made by Susan Heathcote to approve the Intended Use plan as presented. Seconded by David Petty. Motion carried unanimously.

APPROVED AS PRESENTED

AIR QUALITY - TITLE V FEE SFY 2009 BUDGET

Jim McGraw, Supervisor of the Program Development Section in the Air Quality Bureau presented the following information.

The Commission is asked to approve the attached Title V Operating Permit budget establishing the annual Title V fee at \$39.00 per ton air pollution emitted from Title V Operating Permit subject sources. This \$3.80 per ton increase from the current fiscal year is to accommodate personnel and program increases.

A Title V operating permit is required for those facilities with potential emissions that exceed the major stationary source thresholds. A major stationary source is a facility that has the potential to emit 100 tons per year (tpy) or more of any air pollutant; or the potential to emit 10 tpy or more of any individual hazardous air pollutant; or the potential to emit 25 tpy or more of any combination of hazardous air pollutants. Currently Iowa has approximately 280 major stationary sources, also referred to as Title V facilities. Examples of Title V facilities include electric utilities, grain processors, cement plants, and manufacturing operations.

The Title V fee is based on the first 4,000 tons of each regulated air pollutant emitted each year from each major stationary source in the state. Regulated pollutants include: particulate matter less than 10 micrometers in diameter (PM₁₀) and particulate matter less than 2.5 micrometers in diameter (PM_{2.5}), sulfur dioxide (SO₂), nitrogen oxides (NO_x), volatile organic compounds (VOC), lead (Pb), and hazardous air pollutants (HAP). The fee is used to support the development and administration of activities associated with major sources subject to the Title V Operating Permit Program.

Annually on March 31, sources required to obtain Title V Operating Permits submit to the department annual emissions statements for the previous calendar year. The Department totals these emissions and provides that information to the Commission no later than the May meeting. The Commission will then be asked to set the fee based on the program budget.

Air Quality Funding Sources and Cost Centers - The Air Quality Bureau budget is divided into two primary areas: Air Quality Program and Air Title V Program. Expenditures are divided between multiple expenditure (cost center) accounts and a variety of funding sources as listed in Table 1. The attached spreadsheet consolidates the cost centers into the two primary areas to reflect the total program.

Clean Air Act (CAA) section 105 money is awarded to the department through a Performance Partnership Grant (PPG) with the EPA. The PPG is the financial component of the Performance Partnership Agreement (PPA). The department negotiates the PPG on an annual cycle while the PPA is negotiated on a two-year cycle. The PPA contains the mutually agreed upon goals that the EPA and DNR will work together to achieve during the two year agreement period. For air quality, the tasks that must be accomplished to achieve the agreed upon goals are contained in the 105 work plan, which is an attachment to the PPA. As indicated in the chart below, CAA section 105 funds require state matching dollars whereas CAA section 103 funds do not. No Title V money is included in the PPG.

Table1. Summary of Cost Centers and Funding Sources

Program Area	Expenditures (Cost Center)	Funding Source*
Air Title V includes		
	1430	TV Fees
Legal Services	1556	TV Fees
Title V Information & Education		
IT Support	3520	TV Fees
Title V Operating Permit Program	7230	TV Fees
Title V Field Program	7421	TV Fees
Air Quality Program includes:		
IT Support	3510	CAA 105 & GF
Air Quality central office base program	7220	CAA 105 & GF
PM 2.5 Monitoring network	7240	CAA 103
Ambient Air Monitoring (Env. First)	7250	GF
Air Quality field office base program	7419	CAA 105 & GF
Infrastructure Request	New	Proposed GF

* TV Fees – Title V fees

CAA 105 – Clean Air Act section 105 grant with a state match required

CAA 103 – Clean Air Act section 103 grant with no state match required

GF – Legislatively appropriated General Funds or other state funds

Proposed GF – Proposed legislation for greenhouse gas funding & biofuels permitting

Ambient Air Monitoring Changes- Significant changes are anticipated in the ambient monitoring program for particulate matter that is 2.5 microns or smaller (PM 2.5) and for ozone. New federal ambient air quality standards have been promulgated. New equipment will be needed to meet the specifications of the new standard. A multiyear replacement schedule has been created for the new equipment. EPA is also likely to discontinue funding the laboratory analysis for PM 2.5. A combination of CAA 105 money with general fund match, infrastructure money, and Title V fees will be used to meet the monitoring network needs and to offset the possible loss of laboratory analysis funding.

Carryover Funds - The Bureau has been working each year since the program's inception to develop a budget that more accurately reflects the amount of funding required to implement the Title V program. In past years, the Air Quality Bureau budget was planned with approximately a

one percent reserve. This was considered to be an adequate margin to offset factors such as higher than expected expenses, changes in the actual emissions reported, and reimbursement of fees to companies that may have over paid Title V fees in previous years. However, the carry over funds have accumulated each year to an amount greater than 1%. The Bureau has included measures in the budget to reduce the amount that will be carried over into SFY 2010. The measures include adjustments to the projected carryover funds that account for normal staff turnover and the resulting vacancies that occur during a typical state fiscal year.

Title V Budget Changes – The department met with a representative group of the core Title V fee payers on January 24, 2008. The department proposed a \$39.00 fee based on an estimate of 229,000 tons. The fee payers reviewed the draft budget and the need for additional staff was discussed. The tonnage amount was 5,000 tons lower than anticipated in January. The reduced tonnage does not allow for additional positions under the Title V budget at this time.

Details on where changes to the budget are being proposed are listed in the attached spreadsheet in the “Notes” column.

1. Personnel and indirect costs: Personnel costs will increase by 4.3% based on estimates provided by the Department of Management. The indirect costs will increase from 13.38 percent to 13.77 percent in SFY 2009.
2. Professional Services:
 - The Linn and Polk County Local Air Quality Programs have increased personnel and benefits costs.
 - The UHL contract amount reflects an increase due to increased personnel costs and to accommodate changes in the ambient monitoring program requirements.
 - The UNI small business assistance agreement amount reflects an increase to cover increases in personnel costs and the short term grain elevator permitting support.
 - An expense for laboratory analysis related to PM 2.5 has also been added. This expense was previously provided by EPA.

Total Title V Fund expenditures are proposed to be increased from the current SFY 2008 budget levels by over 11% or \$1,200,000 in the SFY 2009 budget. The fee is proposed to increase by 10.8%, from \$35.20 per ton to \$39.00 per ton. Note that \$39.00 per ton is the current fee cap that is established in 567 IAC Chapter 22. The department plans to initiate a rulemaking later this year to raise the fee cap in anticipation of the SFY 2010 - 2014 budget needs.

Catharine Fitzsimmons said that every three years we ask for an increase in the cap. These fees fund about 75% of our budget. The regulatory folks seem to okay with the increase because they know this will result in an increase of services.

Motion was made by David Petty to approve the Air quality – Title V fee budget as presented. Seconded by Ralph Klemme. Motion carried unanimously.

APPROVED AS PRESENTED

NOTICE OF INTENDED ACTION: CHAPTERS 20, 21, 22, 23 25, AND 33, AIR QUALITY PROGRAM RULES –UPDATES, REVISIONS AND ADDITIONS

Christine Paulson, Environmental Specialist Senior in the Program Development Section of the Air Quality Bureau presented the following information.

The Department is requesting permission from the Commission to proceed with the rulemaking process and publish a Notice of Intended Action to amend Chapter 20 "Scope of Title – Definitions-Forms-Rules of Practice," Chapter 21 "Compliance," Chapter 22 "Controlling Pollution," Chapter 23 "Emission Standards for Contaminants," Chapter 25 "Measurement of Emissions," and Chapter 33 "Special Regulations and Construction Permit Requirements for Major Stationary Sources – Prevention of Significant Deterioration (PSD) of Air Quality," of the 567 Iowa Administrative Code.

This rulemaking was presented to the Commission for information in April. The changes from the information item are explained in noted in the brief and are marked with an asterisk.

The purpose of the proposed rule changes is to make corrections, clarifications and improvements to existing air quality rules for:

- Air quality definitions;
- Electronic filing of permit applications and inventories;
- Allowing operation of small, temporary generators during disaster periods;
- Construction permitting procedures;
- Portable plant re-location notifications;
- Title V definitions and permitting procedures;
- Acid Rain program provisions;*
- Emission standards for hazardous air pollutants (HAP);
- Test methods and procedures;* and
- PSD permitting procedures.

The specific items included in the Notice of Intended Action are, as follows:

Definitions update

Item 1 amends the definition of "EPA reference method" in Chapter 20. The amendment makes the definition in Chapter 20 consistent with the definition in Chapter 22, and also reflects updates to EPA reference methods that were adopted by reference in Chapter 25 in the previous rulemakings, and also adopts updates to test methods that EPA recently finalized.

Electronic Submittal – emissions inventories

For the past several years, the Department has given stakeholders the option of submitting emissions inventories electronically using the State Permitting and Air Reporting System

(SPARS). Items 2 and 3 add provisions to the emissions inventory rules providing for electronic submittal.

Temporary Electricity Generation - disaster situations

During the winter ice storms that occurred in 2006-2007 when electricity generation was disrupted throughout much of the state, some utilities installed and operated small, temporary generators. Current rules do not allow for operation of a generator without an owner or operator first obtaining an air construction permit or a variance from the Department. In the fall of 2007, the Department began working with stakeholders to devise the best way for expediting use of these generators in the future while still ensuring that air quality standards are met. Item 4 is the result of these discussions with stakeholders, and specifies the conditions for installing and operating these generators.

Construction Permits – electronic submittal

Item 5 allows for electronic submittal of air construction permit applications. The Department has been accepting electronic submittals through the SPARS system for several years now. This amendment codifies the electronic submittal option.

Construction Permits – portable plant relocation notifications

Item 6 reduces the notification requirement for most portable plant relocations from 30 days prior to relocation to 14 days prior to plant relocation. This change will allow more flexibility for owners and operators of portable plants, while still allowing sufficient time for Department field office staff to conduct air quality inspections at these portable plants.

Title V Permits – definitions, provisions for electronic submittal, timely application, multiple permits and adjustment to fee payment

- Item 7 amends the definition of "EPA reference method" in the Title V rules. The amendment reflects updates to EPA test methods that were adopted by reference in Chapter 25 in previous rulemakings, and also adopts updates to test methods that EPA recently finalized.
- Item 8 amends provisions for the Title V Operating Permit program. First, the amendment includes provisions for electronic submittal of the Title V application forms. Second, the amendment clarifies the requirements for submitting different types of Title V applications for both existing and new major stationary sources. The amendment does not add any new requirements, but simply provides a better description for Title V facility owners or operators who must submit timely applications, revisions and notifications. Third, the amendment provides additional information on timely permit application under the Clean Air Interstate Rule (CAIR) because this program is associated with the Title V program.
- Item 9 adds provisions for the department to allow more than one Title V permit for one stationary source. The amendment codifies Department policy to allow multiple permits under certain circumstances. The Department has issued multiple Title V permits to some, single stationary sources. The Department will review requests for multiple Title V permits for a single, stationary source, and may issue multiple Title V permits, as appropriate.

- Item 10 provides for electronic submittal of emissions inventories being submitted to the Linn or Polk County air quality programs.
- Item 11 adds provisions for correcting errors in Title V emissions inventories and Title V fees. These provisions codify Department policies.
- Item 12 amends a Title V rule to add a description that is consistent with the amendments being proposed under Item 8.
- Item 13 removes the requirement that stack testing be completed prior to an owner or operator submitting an application for a Title V permit renewal. This provision is no longer needed because the Department's Title V program has established procedures to address compliance testing. If a required test is not completed prior to Title V permit renewal, the Department has the option of including a compliance plan in the renewed permit that addresses the need to complete testing.
- Item 14 corrects a cross reference to reflect the amendments in Item 8.

Updates to testing methods for the Acid Rain program*

Item 15 adopts amendments to test methods and analytical procedures that EPA recently finalized.

Emission standards for hazardous air pollutants (HAP) for source categories

The Department is amending the rules in Chapter 23 that adopt by reference new standards added to, and amendments to, the federal National Emission Standards for Hazardous Air Pollutants (NESHAP). A detailed description of each of the amendments is included in the preamble of the attached Notice. A summary of the changes is as follows:

- Item 16 adopt recent amendments that EPA made to the NESHAP. The amendments being adopted are as follows:
 - Amendments to the NESHAP for dry cleaners to correct applicability cross references and to clarify that condenser performance monitoring may be done by either of two prescribed methods (pressure or temperature), regardless of whether an installed pressure gauge is present.*
 - Amendments to the NESHAP for hazardous waste combustors to clarify several compliance and monitoring provisions, and also correct several omissions and typographical errors in the final rule. EPA states that it is finalizing the amendments to facilitate compliance and improve understanding of the final rule requirements.*
 - Amendments to the NESHAP for iron and steel foundries that are major sources of HAP to add alternative compliance options for cupolas at existing foundries and to clarify several provisions to increase operational flexibility.
 - Amendments consisting of technical corrections to the NESHAP for area sources for several source categories, including the NESHAP for acrylic and modacrylic fibers production, carbon black production, chemical manufacturing of chromium compounds, flexible polyurethane foam production and fabrication, lead acid battery manufacturing, and wood preserving. The amendments clarify certain provisions in two of the final area source rules (flexible polyurethane foam production and fabrication and lead acid battery manufacturing) and correct editorial and publication errors in all of the final rules.*

Item 16 also includes language to clarify that an earlier date of adoption may apply for a specific NESHAP.

- Item 17 adopts by reference three new NESHAP for area sources. Area sources are those new and existing sources that are not major sources for HAP. The new standards apply to the following source categories: Hospital Ethylene Oxide Sterilizers; Steelmaking Electric Arc Furnaces; and Iron and Steel Foundries. The Department has identified facilities that may be affected by the new requirements and will be working with these facilities.
- Item 18 adopts by reference three additional, new NESHAP for area sources. These standards apply to the following source categories: Clay Ceramics Manufacturing; Glass Manufacturing; and Secondary Nonferrous Metal Processing. The Department has identified facilities that may be affected by the new requirements and will be working with these facilities.
- Item 19 amends the NESHAP for stationary reciprocating internal combustion engines. The amendment is proposed because the Department is not adopting the federal amendments that EPA finalized in January 2008. The Department is not adopting the new amendments at this time because the Department is still identifying facilities that may be affected by the federal amendments and also is developing an implementation plan for the new federal provisions. The Department plans to adopt the federal amendments in a rulemaking later this year.

Updates to testing methods and procedures for Acid Rain, CAIR, and the Clean Air Mercury Rule (CAMR)*

| ☛ Item 20, 21 and 22 adopt by reference amendments and corrections that EPA recently finalized for 40 CFR Part 75. The test methods and procedures in Part 75 affect the Acid Rain, CAIR and CAMR programs. Although CAMR was recently vacated by the U.S. Court of Appeals for the District of Columbia, EPA has appealed the vacatur and continues to support the mercury monitoring provisions specified in Part 75. The Department will continue to require compliance with the mercury monitoring and testing provisions in Part 75 and will continue to adopt federal amendments to Part 75.

Prevention of Significant Deterioration (PSD) – Amendments to Chapter 33

- Item 23 amends the PSD public participation provisions. After the Department adopted EPA's for PSD reform last year, Department staff determined that it would be helpful to affected facilities if the Department included provisions for re-opening the public comment period for PSD permits. These amendments are in accordance with the Department's procedures.
- Item 24 amends the PSD source obligation provisions to adopt the federal regulations under 40 CFR 52.21 that were inadvertently omitted when the Department adopted EPA's PSD reform rules in 2006. These provisions had been included in the state's PSD rules prior to that time. These provisions make clear that a source owner or operator is subject to enforcement action if a source is not constructed according to its issued PSD permit and the owner or operator does not obtain the required PSD permit prior to initiating construction. The amendment does not change the Department's existing authority to

enforce the PSD permit requirements. The amendment also clarifies the time period allowed for commencing and completing construction on PSD projects.

- Item 25 amends the conditions of permit issuance for PSD permits to add provisions for making administrative amendments.

If the Commission approves this Notice of Intended Action, a public hearing will be held on Monday, July 7, 2008, at 1 p.m. at the Department's Air Quality Bureau offices. The public comment period for the proposed rules will close on Tuesday, July 8, 2008.

Motion was made by Susan Heathcote to approve the Notice of Intended Action: Chapters 20, 21, 22, 23 25, and 33, Air Quality Program Rules –Updates, Revisions and Additions as presented. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS PRESENTED

NOTICE OF INTENDED ACTION – CHAPTER 113.2(8) “SANITARY LANDFILLS FOR MUNICIPAL SOLID WASTE: GROUNDWATER PROTECTION SYSTEMS FOR THE DISPOSAL OF NON-HAZARDOUS WASTES”

Jon Tack, DNR attorney presented the following information.

The Notice of Intended Action to amend subrule 113.2(8) of 567-Chapter 113 “Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes.”

This amendment is being proposed to address public comments and an objection placed upon this subrule by the Administrative Rules Review Committee pursuant to Iowa Code section 17A.4(5) on December 11, 2007. The Administrative Rules Review Committee determined that subrule 113.2(8) is unreasonable and stated “These members are concerned that subrule 113.2(8) constitutes an improper regulatory taking.” The legal effect of this objection is to shift the burden of proof to the Department in any legal challenge to the subrule. Such legal challenge has been filed. The amendment is intended to allow municipal solid waste landfills to continue to use previously approved landfill cells which have a basal liner and leachate collection system until those cells have been filled.

The amendment is also intended to address questions that have arisen in regard to the current closure requirements for sites that were closed pursuant to the previous rule requirements.

The Commission is requested to approve the Notice of Intended Action.

In regards to the closed landfills, when we adopted the rules last year we never intended to add additional requirements to someone who already closed a landfill before the rules took effect.

In the current rule, the landfill has three years that they can continue to fill in the cell. What we are proposing to do is to say that as long as you stay above the bottom liner that is compliant then you can continue to utilize that space. And then next time, you need to build the above liner whenever you expand.

Charlotte Hubbell asked about side liner requirements for landfills.

Jon Tack said that as the rule stands now, there is no requirement for side liners. That is an issue that the Department will need to consider in the future.

Jon Tack read from the code on the reasons for going into closed session.

Motion was made by Charlotte Hubbell to move into closed session to discuss pending litigation. Seconded by Susan Heathcote. Roll call vote went as follows: Ralph Klemme – aye; Paul Johnson – aye; Charlotte Hubbell – aye; Sue Morrow – aye; Henry Marquard – aye; Susan Heathcote – aye; David Petty – aye. Motion carried unanimously.

-----**Commissioners went into Closed Session**-----

Jon Tack said that we are back to consider the adoption of the Notice of Intended Action – Chapter 113.2(8) “Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes”.

Susan Heathcote asked the Departments opinion on the public comments asking to postpone action while we meet with the petitioners for rulemaking.

Jon Tack confirmed that there is a petition for judicial review filed in district court. It’s basically the same petitioners that are going through the petition for rulemaking process. The Department believes that this particular rulemaking should go forward. We would like to keep these two rulemaking issues separate.

Richard Leopold said that we want to be as transparent as possible with this process but would like to see the rulemaking go forward.

Motion was made by Susan Heathcote to approve the Notice of Intended Action – Chapter 133 as presented. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS PRESENTED

PROPOSED RULE – AMENDMENTS TO WASTEWATER RULES, INCLUDING CHAPTERS 60, 62, 63, AND 64

Courtney Cswercko presented the following information.

Chapter 60 “Scope of Title – Definitions – Forms – Rules of Practice”, Chapter 62 “Effluent and Pretreatment Standards: Other Effluent Limits or Prohibitions”, Chapter 63 “Monitoring, Analytical, and Reporting Requirements”, and Chapter 64 “Wastewater Construction and Operation Permits” is being presented to the Environmental Protection Commission for information. The proposed amendments to these chapters will update the wastewater rules to meet requirements in the Clean Water Act, reflect changes in technology and water quality standards, and include language from the Department’s Policy Implementation Guidance (PIG) documents. These rules have not been updated or changed in the last 20 years. They haven’t kept pace.

The following is a summary of the proposed amendments to the rules:

Chapter 60

- Add definitions and new permit application forms
- Clarify language concerning permit applications

Chapter 62

- Add language prohibiting certain discharges to domestic wastewater treatment facilities
- Clarify the procedure for calculating 30-day average percent removal
- Include language allowing the use of TMDLs to derive permit limits
- Add language from a PIG on effluent reuse

Chapter 63

- Replace the language on bypasses and include language on sanitary sewer overflows
- Update monitoring requirements for all NPDES permits by increasing the base monitoring requirements and adding Total Nitrogen, Total Phosphorus, and Total Kjeldahl Nitrogen monitoring
- Remove the monitoring table for inorganic waste discharges and replace it with a rule-referenced document

Chapter 64

- Add classes of facilities that will be exempted from obtaining operation permits
- Clarify the language regarding the issuance and denial of operation and NPDES permits
- Clarify the public notice requirements for NPDES permits
- Add language on the determination of significant non-compliance

We had nine stakeholder meetings between January and March. Several comments were received from a variety of groups and individuals across the state. EPA has also made some comments on these rules. They are not substantial changes.

INFORMATION

MONTHLY REPORTS

Wayne Gieselman, Division Administrator, Environmental Protection Division, presented the following items.

The following monthly reports are enclosed with the agenda for the Commission's information.

1. Rulemaking Status Report
2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Manure Releases Report
5. Enforcement Status Report
6. Administrative Penalty Report
7. Attorney General Referrals Report
8. Contested Case Status Report
9. Waste Water By-passes Report

INFORMATION

GENERAL DISCUSSION

Wayne Gieselman gave the Commissioners a heads up that there will be several controversial issues coming in the near future.

- ❖ Manure stockpiling
- ❖ Regulatory analysis of manure application on frozen ground
- ❖ Water quality (anti-degradation and nutrient standards for lakes)
- ❖ And number of other housekeeping rules

One thing we will bring back next month is the stormwater fee increase. Internally we were trying to do some legislative budget fixes. Unfortunately, we were unable to remove floodplain funding from the stormwater fees; however we were able to remove TMDL funding.

Paul Johnson asked what variances are for when it comes to manure and grain dust. How long are they given for?

Wayne Gieselman said that he will look further into it.

Our emergency response folks did receive a \$280,000 grant from I.T. Enterprise to update our hazardous waste database. Last month, we also received \$280,000 to update our AFO database.

Antidegradation Update

Chuck Corell said that we have held two stakeholder meetings discussing our anti-deg. We have put out two separate drafts of implementation procedures, which is the meat of the anti-deg. We are still on track to come back with an information item in July and a notice in August. Stakeholders have been very well involved and engaged in this process so far.

REGULATION OF APPLICATION OR PLACEMENT OF MANURE ON FROZEN GROUND

Motion was made by Henry Marquard to have the Environmental Protection Commission consider reports and information brought before the Commission regarding high ammonia, nitrate and bacteria levels in Iowa waters that may result from the placement of animal manure by agricultural operations on frozen ground finds that the practice of placement, spreading or otherwise depositing manure on frozen ground is a source of water pollution in Iowa waters. The Commission therefore directs the Department of Natural Resources to being rulemaking to protect the quality of Iowa waters by developing reasonable regulations on the practice of placing, spreading or storing animal manure on frozen ground including, where necessary, prohibiting the practice. It is the further direction of the Commission that in developing such a rule the Department consult with affected interests including those representing agriculture, public water supply agencies and environmental organizations and review available scientific data and regulations in neighboring states regarding this practice. The Commission recognizes that while further definitions may be required, frozen ground is defined as existing where due to freezing soil moisture, snow pack or surface ice, manure placed on the ground will not enter the soil and is subject to run off. The intent of the Commission is that the scope of the rule is to be co-terminus with the full legal authority of the Commission to protect the waters of the state from such hazard. The Department is directed to report monthly to the Commission as to the status of the rulemaking. Seconded by Susan Heathcote.

Henry Marquard said that the intent of this motion is to basically ask for information and research. This was intended to be broad. I think this motion has some additional restrictions on the placement of manure as compared to the rule in place. This is not a motion telling the Department to do something, it's asking for knowledge and expertise.

Charlotte Hubbell asked if Minnesota has restrictions on application of manure to frozen/snow covered grounds.

Susan Heathcote said that there are restrictions, primarily set backs from sensitive areas (300 feet). It excludes grass waterways and berm drainage ditches. In Iowa it's 200 feet but only if you don't inject or incorporate.

We need to come up with a solution to this problem. We need to get stakeholder and producer groups. The solution to this may cause other problems so let's go into this with our eyes open. We need to know what the results are if we were to ban manure application and that we are prepared to deal with those secondary steps.

Ed Tormey reminded the Commission that we received a petition for rulemaking and therefore have 60 days to decide whether to reject the petition or go forward with the a Notice of Intended Action.

Richard Leopold said that he would like to incorporate staff's expertise on this issue as well. Gene Tinker and other DNR field office deal with this stuff daily. I would like to have the environmental impact quantified and qualified by our expert opinions.

Charlotte Hubbell said that the DNR legal bureau has given the Commissioners guidance on whether or not we can include anhydrous ammonia or other commercial fertilizers. They suggest that we submit to the Secretary of Agriculture our findings and recommendations on agricultural chemicals that have unreasonable effects on humans or environment. I would ask the Department when they are researching manure application facts that they also include materials, findings, factual information about chemical fertilizers.

Roll call vote went as follows: Paul Johnson – aye; Susan Heathcote – aye; Sue Morrow – aye; Henry Marquard – aye; Ralph Klemme – nay; Charlotte Hubbell – aye; David Petty – nay. Motion carried.

David Petty asked Gene Tinker to provide information on the rules in place regarding application of manure on frozen ground.

Gene Tinker said that most states that do have restrictions are for CAFO size operations; anything less than CAFO size is a recommendation.

Sue Morrow said after today, it's evident that we are not able to protect the state of Iowa the way the Matrix is set up. We have people coming to us every month with similar cases to what we had today. I don't feel we are carrying out our mission unless we are able to protect our state. We have to open this kettle otherwise we end up in a very frustrating situation. I think we have a few years of knowing what works with the Matrix and what doesn't. As much as no one wants to take this one, this is one thing the Commission deals with all the time. We need to re-look at the Matrix. I realize this is a legislative issue but I wish the DNR staff would take this on and guide us on what we need to do to make this a working instrument. There are far too many loop holes. I understand they did the best they could when it started but it needs to be re-evaluated and strengthened.

Randy Clark said that the county only has 30 days to respond. That's typically too short of a timeframe to be asking for public comment.

Wayne Gieselman said that the Matrix goes above and beyond the statutory requirements. It's a lot better tool than we ever had before. I'm not saying there's no room for improvement but when the matrix was created, the people involved were named by the legislature. The Department had only one voice when this was generated. From my perspective, I think we should go back to the same group people, because it was a statutory mandate.

Charlotte Hubbell said that she voted against the Department's decisions because I didn't feel they took into account the placement of a hog facility near a mental institution, where people had no choice to move. This time I voted against the Department because it's a clear case as Paul said of us dumping manure on manure in a watershed that we know is a problem watershed. It's a sensitive area. I think we have the tools to deal with these areas particularly where there is ammonia contamination in their water wells in Jefferson and severe nitrate contamination in our drinking water sources. We have the discretionary authority to deal with it, we just need to do it. We missed an opportunity today to send a message. I am disappointed with Commissioners who voted against the motion, because if it was in their backyard, they would have changed their vote.

David Petty said that the matrix is one tool that we didn't have before. When the group was working on the matrix, the items had to be agreed upon by everyone participating. People argue the matrix because they don't have anything else.

Henry Marquard said that he voted against it because he doesn't believe the legislators have given this Commission that authority. On the other hand, in our report to the legislature, I have pushed very strongly for legislative changes. I'm not sure that the problem is the Matrix. In my opinion, what needs to be done is allowing the commissioners to consider factors like concentrations in an area, unique groundwater topography, etc. I don't believe we can overturn a permit for the same reasons the department cannot deny one, because they meet the statutory requirements. Today was a good case on why the law needs to be changed.

Paul Johnson said that we had an obvious case today of pushing the limit. We had the chance to make our case. When are we going to take stand? Never. We're just going to sit here and hold back our hands saying that we don't have the authority.

Wayne Gieselman said that the Commission has denied about six different livestock permits in the last five years.

Richard Leopold said that with respect to the Department discretion's rule, we don't see the other side of the coin too. We don't see the twenty times of how this rule worked very well with the producers encouraging them to do something else. We have people in the field that use this a lot. I think the Director has the authority to protect the air, land and water of this state but at the same time needs to be very judicious in using it. If we used this rule and lost in the court of law, then the leverage is gone. I believe we have a problem in this state but it's a systematic problem and how do we get at it. We need to be careful at selecting the test case.

Charlotte Hubbell said that she agrees but doesn't want to see Des Moines Water Works shutting down the Raccoon River and pumps failing and then no drinking water for Des Moines. I don't want to get to this point. I want to be proactive.

Sue Morrow said that we are almost all in agreement that something needs to be done. Whether it's the matrix or something else, we need to act.

David Petty said that Des Moines Water works gentlemen reported that 5% contaminant product is coming from livestock. There is something else out there that is causing the problem. Prestage Farms would have been willing to change the application fields so they weren't close to town.

Ralph Klemme said that there are things that could be changed on the matrix, but it's better than what we had. I believe it has done some good things across the state.

Susan Heathcote said that there were things that could be done to modify Prestage Farms permit. I believe both parties could have agreed on a few changes as suggested by Commissioner Petty.

Charlotte Hubbell asked about the idea of a moratorium on CAFOs in watersheds that have been scientifically proven to be highly polluted.

Wayne Gieselman said that a moratorium should come from the legislature and not this Commission. In regards to the Department discretion rule, we do look at the four factors that we have authority to review. Gene Tinker, Ken Hessiunus, and Randy Clark look at all of the permit sites and evaluation. On any potentially controversial site, Rich gets some heads up on what has been reviewed. We do have the ability to weigh in and give input. By the time it gets to an appeal, the decision has been made.

Next month's meeting

Many Contracts!

NEXT MEETING DATES

June 10, 2008 – EPC Meeting – Urbandale

July 7-8, 2008 – EPC Meeting – Storm Lake

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairperson David Petty adjourned the meeting at 5:43 p.m., Tuesday, May 13, 2008.

Richard A. Leopold, Director

Henry Marquard, Chair

Suzanne Morrow, Secretary

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